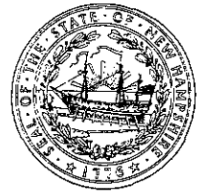




State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



PLEASE NOTE: Effective September 1, 2003, the street address is 29 Hazen Drive.

Town of Alexandria  
45 Washburn Road  
Alexandria, NH 03222

RE: Tax Map 411, Lot 1, Mundy Road

NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
No. AF 03-039

November 14, 2003

## I. INTRODUCTION

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Water Division ("DES") to the Town of Alexandria, New Hampshire, pursuant to RSA 482:8-a and Env-C 613.02 (e). The Division is proposing that fines totaling \$2,000 be imposed against the Town of Alexandria for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

## II. PARTIES

1. The Department of Environmental Services, Water Division ("DES") is an administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. The Town of Alexandria is a duly constituted municipality of the state of New Hampshire having a mailing address of 45 Washburn Road, Alexandria, NH 03222.

## III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIMS

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, or of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. The Town of Alexandria (the "Town") is the owner of land located on Mundy Road, more particularly described on Town of Alexandria Tax Map 411 as Lot 1 ("the Property").
4. The Property is being developed as a public works facility by the Town. The Town hired Larry Sharp to log, stump, and grade the site.
5. In May 2002, Lobdell Associates prepared a wetlands delineation of the Property. The

wetlands delineation was incorporated into a survey prepared by Colin R. Brown dated June 24, 2002 and identified the wetlands delineated by Lobdell Associates on the survey.

6. In July 2003, Larry Sharp, a contractor the Town had hired to do the initial site work, logged, stumped, and graded the site. The wetlands that were delineated by Lobdell Associates were filled as a result of the site work.
7. On September 5, 2003, DES personnel inspected the Property and found the following:
  - a. Approximately 7,300 square feet of wetlands had been filled during site development activities.
8. DES has no record of a permit issued for the fill observed during the field inspection.
9. RSA 482-A:3, I states that no person shall "excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
10. RSA 482-A:14, III states in part that "failure, neglect or refusal to comply with this chapter or rules adopted under this chapter, or an order or condition of a permit issued under this chapter, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by this chapter shall be deemed violations of this chapter."
11. Env-C 614.05(b)(2) defines a Class IV Violation in part as "[u]nauthorized fill that involves:  
(2) Any fill or building construction in wetlands for lot development."
12. Env-C 614.05 authorizes a fine of \$2,000 for Class IV Violations of wetlands rules.

#### IV. VIOLATIONS ALLEGED AND PROPOSED ADMINISTRATIVE FINES

1. The Town has violated RSA 482-A:3, I by placing approximately 7,300 square feet of fill in a wetland for lot development. For this violation, Env-C 614.05(b)(2) specifies a fine of \$2,000.

**The total fine being sought is \$2,000.**

#### V. HEARING, REQUIRED RESPONSE

The Town has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, January 26, 2004** at 9:00 a.m. in **Room C-110** of the DES offices at **29 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, the Town is required to respond to this notice.** Please respond **no later than December 15, 2003**, using the enclosed colored form as follows:

1. If the Town plans to attend the hearing, please sign the appearance (upper portion) and return it to the DES Legal Unit, as noted on the form.
2. If the Town choose to waive the hearing and pay the proposed fine, please sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.

3. If the Town wish to discuss the possibility of settling the case, please sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate the Town's interest in settling.

The Town is not required to be represented by an attorney. If the Town chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If the Town wishes to have a hearing but is unable to attend as scheduled**, the Town must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If the Town does notify the DES Legal Unit in advance and does not attend the hearing, the hearing will be conducted in the Town's absence in accordance with Env C 204.09.

## **VI. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that the Town committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules.

Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that the Town committed the violations and that the total amount of fines sought is the appropriate amount under the applicable statute and rules, then the fine sought will be imposed, subject to the following:

- \* Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that the Town proves, by a preponderance of the evidence**, applies in this case:
  1. The violation was a one-time or non-continuing violation, **and** the Town did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** the Town did not benefit financially, whether directly or indirectly, from the violation.
  2. At the time the violation was committed, the Town was making a good faith effort to comply with the requirement that was violated.
  3. The Town has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
  4. Other information exists which is favorable to the Town's case which was not known to the Division at the time the fine was proposed.

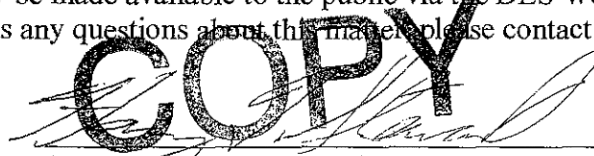
**\*\*\*\*\*IMPORTANT NOTICE\*\*\*\*\***

**An administrative fine hearing is a formal hearing.** Any hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that the Town committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is the Town's opportunity to present testimony and evidence that the Town did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If the Town has any evidence, such as photographs, business records or other documents, that believes show that the Town did not commit the violation(s) or that otherwise support the Town's position, the Town should bring the evidence to the hearing. The Town may also bring witnesses (other people) to the hearing to testify on The Town's behalf.

**If the Town wishes to have an informal meeting to discuss the issues, the Town must contact the DES Legal Unit at (603) 271-6072 to request a prehearing conference.**

\*\*\*\*\*

Information regarding this proposed fine may be made available to the public via the DES Web page ([www.state.nh.us.des](http://www.state.nh.us.des)). If the Owner has any questions about this matter, please contact the DES Legal Unit, at (603) 271-6072.

**COPY**  
  
Harry K. Stewart, P.E., Director  
Water Division

Enclosure (NHDES Fact Sheet #CO-2002)

cc: Mark Harbaugh, DES Legal Unit  
Susan Weiss Alexant, DES Hearings and Rules Attorney  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Marjorie Swope, NHACC  
Mary Ann Tilton, DES Wetlands Bureau  
Public Information Officer, DES PIP Office

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**THE TOWN OF ALEXANDRIA  
IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN DECEMBER 15, 2003**

**APPEARANCE ON** behalf of the Town of Alexandria.

\_\_\_\_\_ I will attend the hearing scheduled for Monday, January 26, 2003 at 9:00 a.m. in Room C-110 of the DES offices at 29 Hazen Drive in Concord, NH.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**WAIVER OF HEARING** On behalf the Town of Alexandria.

\_\_\_\_\_ I certify that I understand my right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$2,000 paid to "Treasurer, State of New Hampshire" is enclosed.\*

*\* If payment is made by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**RETURN THIS PAGE ONLY TO:**

**Michael Sclafani, Legal Assistant**

**Department of Environmental Services ~ Legal Unit**

**6 Hazen Drive, P.O. Box 95**

**Concord, NH 03302-0095**

# ENVIRONMENTAL Fact Sheet



6 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • [www.des.state.nh.us](http://www.des.state.nh.us)

CO-2

2002

## Administrative Fines of the Department of Environmental Services

The Commissioner of the Department of Environmental Services (DES) is authorized by several statutes to impose administrative fines for certain violations of those statutes. In order to implement this authority, the Commissioner has adopted rules which specify the procedures for notifying people that a fine is being proposed and which specify the fine amount for any given violation. These rules are identified as Chapter Env-C 600.

Administrative fine proceedings follow a defined path. The first step is for a Division of DES to issue a Notice of Proposed Fine. The Notice will inform you of the violations the Division believes you have committed, together with the dollar amount of the fine that is being proposed. At this point, a final decision as to whether to impose the fine **has not been made** ... the Notice simply initiates the proceeding. The Notice will also inform you that you have a right to have a hearing before a final decision will be made, and may give a date and time for the hearing.

The Notice you receive will have a page attached to it on which you can indicate whether you will attend a hearing or whether you are waiving your right to a hearing and paying the fine which has been proposed. **YOU MUST COMPLETE AND RETURN THIS FORM.** The worst thing you can do if you receive a Notice is to ignore it! Under the rules which have been adopted, the case can proceed even if you don't respond. In order to achieve the best result, you must participate in the process.

When you receive a Notice of Proposed Fine, if you are interested in trying to settle the case without going to a formal hearing you should contact the person identified in the Notice. Many fine cases are settled in this way, often with a lower fine, a payment schedule, and/or a suspended fine. The negotiations need to start soon after the Notice is received, though. Don't wait until the day scheduled for the hearing to ask about settling the case.

If the case proceeds to a hearing, the Commissioner will designate a person to serve as a hearing officer to preside at the formal hearing. The hearing officer will not have prior knowledge of the Division's allegations, and will be neutral insofar as the outcome of the case is concerned. At the hearing, the Division will be required to prove that the violation(s) occurred and that the proposed fine is warranted. You will have an opportunity to ask questions of (cross-examine) the Division staff, and also present your own evidence, including testimony of witnesses if you wish, to show why the fine should not be imposed.

(over)

After the hearing is over, the hearing officer will compile the record (i.e. all of the information that was received at the hearing) and will make a recommendation to the Commissioner as to whether or not the fine should be imposed. The Commissioner will make a decision based on the evidence and testimony, and the decision issued by the Commissioner will specifically state the reasons for the decision.

The rules adopted by the Commissioner require the proposed fine to be reduced in certain circumstances, which are listed at Env-C 601.09. These include that you have not previously violated a law or rule implemented by DES, or that you acted in good faith. The Commissioner also has the discretion to allow you to pay a fine on a payment schedule, and/or to suspend all or a portion of the fine conditional upon remedying the underlying violation or staying in compliance with DES requirements for a specified period of time.

Sometimes people are concerned that the findings and rulings made by the Commissioner might be used against them in a separate proceeding (for instance, if their neighbor sues them for damages arising out of the same violation(s) for which they are being fined). In such a case, DES has accepted payment of the fine with a specific denial of liability. This is like pleading "no contest" to a traffic ticket: you pay the fine assessed, but are not admitting that you did anything wrong.

*This fact sheet is intended as a basic source of information concerning DES administrative fines. It is not intended to replace the laws and rules regarding administrative fines, but merely to provide a summary of them.*

For more information contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095, (603) 271-6072.